

The Committee concludes that the issues presented involve provisions of SCR 60.05(3)(c)2.a. & 2.d., 60.01(11), 60.01(4) and 60.03(2).

**A. SCR 60.05 and 60.01**

SCR 60.05(3)(c)2.a. states that:

2. A judge, in any capacity:
  - a. May assist . . . [a nonprofit charitable] organization in planning fund-raising activities . . . but may not personally participate in the solicitation of funds or other fund-raising activities. . . .

SCR 60.05(3)(c)2.a. prohibits a judge from personally soliciting funds for nonprofit organizations. The section does not qualify the prohibition on the basis of "non-lawyer friends and neighbors," or on the basis of the amount of money solicited by the judge. The prohibition appears to be absolute and without regard to any group of persons whom the judge might solicit. Further, the Code does not allow for the solicitation of any specified amount of money.

The Committee notes that the Comment to SCR 60.05(3)2.d. states that the section should not be read as proscribing a judge's participation in de minimis fund-raising activities such as asking friends and neighbors (but not attorneys or others likely to appear before the judge) to buy tickets to a pancake breakfast for a local neighborhood center. The Committee concludes that the solicitation of \$25 to \$100 contributions from nonlawyer friends and neighbors would not be a de minimis fund-raising activity.

The judge indicates that the solicitation of non-lawyer friends and neighbors would take place without the use of the judge's letterhead. The Committee recognizes the judge's awareness that the use of judicial letterhead for non-judicial or unofficial purposes would violate provisions of the Code which prohibit the use of the prestige of office to advance private interests. However, the prohibition in SCR 60.05(3)(c)2.a. exists regardless of the mode or mechanism of solicitation. The use of non-judicial letterhead would not remove the proposed solicitation from the prohibition of the Code.

The Committee recognizes that a judge may wish to personally solicit funds for a nonprofit organization from members of the judge's family. As recognized in Wis. Advisory Op. No. 97-7 (1997), which addressed issues of a judge's solicitation of campaign funds, although a strict reading of SCR 60.05(3)(c)2.a. would prohibit a judge from asking a spouse or close relative for a contribution to a nonprofit organization, such a reading is contrary to

public policy as expressed in the statutes. The policy of the state set forth in sec. 765.001(2), Wis. Stats., is " . . . to promote the stability and best interests of marriage and the family." A strict reading also is contrary to the Preamble of the Code of Judicial Conduct which states in part:

. . . The provisions of the Code of Judicial Conduct are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. . . .

The ban against personal solicitation by a judge exists for two reasons: (1) the party solicited will not feel "obligated" or "strong-armed" into making a contribution; and (2) if a contribution is made, the contributor will not appear to have "earned" the judge's favor. These dangers do not exist when a judge solicits a spouse or close family member, because SCR 60.04(4)(d) and (e) require a judge to disqualify himself or herself whenever certain family and household members are involved in a case pending before the judge. SCR 60.02 and 60.03 implicitly require such recusal. SCR 60.01(11) defines "member of the judge's family" as:

. . . the judge's spouse, child, grandchild, parent, grandparent and any other relative or person with whom the judge maintains a close familial relationship.

The Committee concludes that the prohibition against the personal solicitation of funds for nonprofit organizations does not apply to spouses or members of the judge's family.

***B. SCR 60.05(3)(c)2.a.***

SCR 60.05(3)(c)2.a. states:

. . . a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

The judge seeks to solicit fellow judges for contributions ranging from \$25 to \$100 for the charity ride. The judge has no appellate or supervisory authority over the judges to be solicited. The Committee concludes that such solicitation does not violate SCR 60.05(3)(c)2.a.

***C. SCR 60.03(2) and 60.01(4)***

SCR 60.03(2) states:

. . . A judge may not lend the prestige of judicial office to advance the private interests of the judge or of others or convey or permit others to convey the impression that they are in a special position to influence the judge. . . .

SCR 60.01(4) states:

"De minimis" means an insignificant interest that does not raise reasonable question as to a judge's impartiality or use of the prestige of the office.

The purpose of the charity bicycle ride is to raise funds for nonprofit organizations. If the judge rides in the event, may the judge's identity be used for any non-fundraising purpose? The judge does not delineate the purposes which may be non-fundraising. In the context of what appears to be a major fundraising effort, it is difficult to imagine what about that event may not be for the purpose of raising funds.

SCR 60.03(2) prohibits a judge from allowing others to use the prestige of judicial office to advance their private interests. Any use of the judge's identity, as a judge, would be for the purpose of using the prestige of the judicial office to advance the interests of the charity ride. Therefore, the Committee concludes there can be no use of the judge's identity in connection with the ride.

A further question is whether the judge may participate in the ride under any circumstance. SCR 60.05(3)(c)2.a. prohibits not only solicitation of funds by judges, but also states that a judge . . . "may not personally participate in . . . other fundraising activities." The question becomes whether the judge's participation in a 5-day 500-mile charity bicycle ride constitutes de minimis participation so as to not raise a reasonable question as to the judge's impartiality or the use of the prestige of the office. The comment to SCR 60.05(3)(c)2.d. states, in part:

SCR 60.05 should not be read as proscribing participation in de minimis fund-raising activities so long as a judge is careful to avoid using the prestige of the office in the activity. Thus, e.g., a judge may pass the collection basket during services at church, may ask friends and neighbors to buy tickets to a pancake breakfast for a local neighborhood center and may cook the pancakes at the event but may not personally ask attorneys and others who are likely to appear before the judge to buy tickets to it.

The Committee concludes that riding anonymously in a charity bicycle ride constitutes de minimis participation in a charitable fund-raising activity, and is thus permitted.

### **CONCLUSION**

The Committee concludes that a judge may not solicit contributions for a charity bicycle ride from non-lawyer friends and neighbors. The solicitation is prohibited whether or not the judge uses judicial letterhead stationery. The judge may solicit contributions for the charity bicycle ride from fellow judges over whom the judge has no appellate or supervisory capacity. If the judge rides in the charity bicycle ride, the judge's identity as a judge may not be used for any non-fundraising purposes.

### **APPLICABILITY**

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60 -- Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 98-7 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 8th day of May, 1998.

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Thomas H. Barland  
Chair